

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte FUMIO ISHIHARA, MUTSUMI NARUSE, TAKANORI KOHNO
TETSUO SAKAMOTO, KOUICHI KOBAYASHI, TERUYUKI TONGU
NORIFUMI NAKAGAWA, TOMIO KUROSU

Appeal No. 2000-0757
Application No. 09/021,393

ON BRIEF

Before KRASS, JERRY SMITH and GROSS, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 9, 33 and 35-38. Claims 1-8 and 10-15 have been canceled and claims 16-32 and 34 have been withdrawn from consideration due to a restriction requirement.

The invention pertains to controlling exposure in a camera. More particularly, although two-area photo-sensors for divided brightness measurement are known, the

instant invention gives the central photometric element a trapezoid shape, alleged to result in "simple metering with superior results even when the main subject is at a distance other than the normal 2-3 meters" [brief-page 3].

Independent claim 9 is reproduced as follows:

9. A photo-sensor for divided brightness measurement for automatic exposure control comprising:

a photo-receiving surface on which an image of a scene to be photographed is formed;

a central photometric element disposed in a center of said photo-receiving surface for detecting a central light value from a central area of said scene, said central photometric element having a trapezoid shape whose bottom side is longer than a top side thereof; and

a peripheral photometric element surrounding said central photometric element, for detecting a peripheral light value from a peripheral area of said scene independently from said central photometric element.

The examiner relies on the following references:

Takei et al. (Takei)	4,746,949	May 24, 1988
Soshi et al. (Soshi)	4,987,434	Jan. 22, 1991
Takagi	5,534,968	Jul. 09, 1996

Claims 9, 33 and 35-38 stand rejected under 35 U.S.C. § 103 as unpatentable over Takei, Soshi and Takagi.

Reference is made to the briefs and answer for the respective positions of appellants and the examiner.

OPINION

We reverse.

The examiner cites Takei as evidence of the photo-sensor of independent claim 9 but for the central photometric element having a trapezoid shape. Rather, as shown in Figure 2, Takei discloses a rectangular shaped element.

The examiner relies on Figure 4 of Soshi for an alleged teaching of a circular photometric element about 3% of the photometric surface area. However, since this limitation is found only in dependent claim 35, it escapes us as to why the examiner includes the Soshi reference in the statement of rejection of independent claim 9.

Finally, the examiner cites Takagi for the teaching of employing various shapes for the central photometric element, pointing specifically to the “rice ball” shape in Figure 6D and noting how it “is getting very close to a trapezoid shape” [answer-page 4]. Since Takagi teaches that the central area may take different shapes and sizes, the examiner concludes that it would have been obvious “to use other shapes and sizes for the central photometric element 4 in Fig. 2 of Takei...and central photometric element 1

in Fig. 4 of Soshi...since such appear to be a matter of design choice dictated by what portions of the subject scene one wants to allocate to central photo metering and to the peripheral photo metering areas” [answer-page 5].

We disagree. If Takagi taught some method of determining the appropriate shape of the central portion for a particular result and the artisan would have been led by such a teaching to conclude that a trapezoid shape central portion should or would be used for the result sought by appellants, then we would agree that the combined teachings of the applied references would have made the instant claimed subject matter obvious within the meaning of 35 U.S.C. § 103.

However, the examiner points to no such teaching in Takagi and we find no such teaching in Takagi that would have led the artisan to form the central portion element in a trapezoid shape. In fact, the examiner admits that no trapezoid shape for the central portion is taught by Takagi but concludes that it would have been a “matter of design choice.” It might be a matter of design choice where any particular shape would be equally suggested by the prior art or where the prior art suggests how to get a particular result by forming the central portion element of a specific shape. However, in the instant case, Takagi suggests various shapes in Figure 6, none of which is a

trapezoid, whereas appellants specifically disclose in their specification the trapezoid shape of the central portion element and how/why such a shape was experimentally achieved. See pages 17-20 of the specification and Figures 6A-6C, for example, showing a relatively invariable light value for a main subject as distance varies but more of a variation for the peripheral photometric area as distance varies. In other words, since appellants have shown a specific reason, or a criticality, for making the central portion element of a trapezoid shape, while Takagi provides no reason for making this element the claimed shape, it does not suffice for the examiner to reach a conclusion of obviousness based on a mere allegation of “design choice.”

It is our view, to whatever extent the examiner may have set forth a prima facie case of obviousness, appellants have presented convincing evidence in the instant disclosure to overcome that prima facie case and the burden has shifted back to the examiner to show that, in fact, the trapezoid shape of the central portion element would clearly have been suggested by the prior art in view of appellants’ convincing rebuttal of the examiner’s allegation that the shape is no more than a mere “design choice.”

Appeal No. 2000-0757
Application No. 09/021,393

The examiner's decision rejecting claims 9, 33 and 35-38 under 35 U.S.C. § 103 is reversed.

REVERSED

ERROL A. KRASS)	
Administrative Patent Judge)	
)	
)	
JERRY SMITH)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
ANITA PELLMAN GROSS)	
Administrative Patent Judge)	

eak/vsh

Appeal No. 2000-0757
Application No. 09/021,393

YOUNG & THOMPSON
745 SOUTH 23RD STREET 2ND FLOOR
ARLINGTON, VA 22202